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Supreme Court, U.S.
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Case No. 03-579

IN THE UNITED STATES SUPREME COURT

STATE OF FLORIDA,

Petitioner,

v.

JOHNNY DIAZ,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

PETITIONER'S SUPPLEMENTAL BRIEF

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ARGUMENT

Petitioner, the State of Florida, respectfully submits this Supplemental Brief to note that certiorari was recently granted by this Honorable Court in an unrelated but relevant case, *Hiibel v. Sixth Judicial District Court*, 59 P.3d 1201 (Nev. 2002), *cert. granted*, 72 U.S.L.W. 3280 (U.S. Oct. 20, 2003)(No. 03-5554). The petition for writ of certiorari was filed in the instant case on October 8, 2003, and the grant of certiorari in *Hiibel* occurred twelve (12) days thereafter on October 20.

In *Hiibel*, an issue presented is whether the Fourth Amendment is violated where a person is required to identify himself when stopped by the police. Candidly, the considerations attendant to that question are not identical to those presented *sub judice* where the existence of probable cause is not at issue in *Hiibel*, but here the probable cause which supported a valid stop has dissipated. Nevertheless, there is sufficient similarity in the issues and underlying Fourth Amendment concerns to warrant bringing this matter to the attention of the Court.

The identification issue in *Hiibel* is premised upon the application of a particular Nevada state statute, NRS 171.123(3), which in pertinent part states:

> 3. The officer may detain the person pursuant to this section only to ascertain his identity and the suspicious circumstances surrounding his presence abroad. Any person so detained shall identify himself but may not be compelled to answer any other inquiry of any peace officer.

This statutory provision is the codification of the Court's decision in *Terry v. Ohio*, 392 U.S. 1 (1968). *See State v. Lisenbee*, 116 Nev. 1124, 13 P.3d 947 (2000). *Terry* permits a a police officer to detain a person on less than probable cause – reasonable suspicion – and a stop based upon reasonable suspicion often includes a request for the person stopped to supply his identification. *See Adams v. Williams*, 407 U.S. 143, 146 (1972). Further, temporary detentions are constitutionally

permissible on even less than reasonable suspicion; in *Florida v. Royer*, 460 U.S. 491 (1983), it was determined that a law enforcement officer does not run afoul of the Fourth Amendment merely by approaching an individual, even where there is no reasonable suspicion that criminal activity is afoot, and asking that individual whether he is willing to answer some questions. As an adjunct to these now-basic constitutional precepts, it is eminently reasonable for a police officer to be able to request identification from the individual to alleviate, at the very least, personal safety concerns of the officer. It should be of no moment whether the reason for the stop is of a continuing nature as in *Hiibel* or whether the initial reason for the stop has concluded as in the instant case. In both situations the need to engage in the *de minimus* intrusion of requesting identification is warranted and reasonable where a valid stop has been effected.

Disallowing a law enforcement officer who is engaged in the lawful performance of his duties to protect himself by not permitting that officer to ascertain with whom he is dealing serves only to sanction a much broader protection for the individual, at the expense of the officer, than that envisioned by the framers. It is undeniably correct that protection was and is to be accorded individuals from unreasonable intrusions into their homes, persons, papers, and effects, but it is submitted that this protection does not extend to a request for identification of an individual who has been validly stopped. In *Hiibel*, it is contended by Nevada that Fourth Amendment concerns are not implicated by a request of a law enforcement officer for the identification of a detained individual. The certiorari petition was filed in the instant case to seek judicial recognition that a request for identification by a police officer does not hinge upon whether the initial purpose of a stop has concluded – as long as the stop itself was valid, requesting identification does not implicate Fourth Amendment concerns. Thus, the underlying concerns presented to the Court in *Hiibel* are similar to those presented *sub judice*.

CONCLUSION

Petitioner respectfully requests this Court to grant the petition for writ of certiorari.

Respectfully submitted,

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